

To: Wall, Tom[Wall.Tom@epa.gov]
Cc: Goodin, John[Goodin.John@epa.gov]; Monschein, Eric[Monschein.Eric@epa.gov]; Keating, Jim[Keating.Jim@epa.gov]; Curtin, James[curtin.james@epa.gov]
From: Furtak, Sarah
Sent: Thur 9/12/2013 8:21:23 PM
Subject: Tom: Debrief on Pend Oreille Kalispel Meeting Aug. 28

DRAFT-DELIBERATIVE* ATTORNEY-CLIENT PRIVILEGE

Hi Tom,

In follow-up to your request for a debrief on the Aug. 28 face-to-face meeting (Seattle, WA) on the Pend Oreille TMDL for temperature, below are some highlights that I took from our HQ-R10 debrief earlier this week. Once we have the draft material ("Next Steps," below) within the next week or so, I propose we reconnect with you in greater detail to share that material with you. Please let me know if you have any questions or concerns.

Thanks,
Sarah
202 566 1167

--Participants in the August 28 meeting included 3 reps from the Kalispel Tribe, Region 10's Dave Croxton, Dan Opalski, HQ's Jim Keating, and (via telephone) Jim Curtin.

-- Kalispel Tribe described that it doesn't want the TMDL to short circuit implementation; the tribe had specific suggestions for Box Canyon Dam (downstream of reservation).

--EPA explained how the time lag issue is real; one rep of the tribe acknowledged the reality of time lag.

--Kalispel Tribe feels a better description of WQ impairment at the Idaho/Washington border is needed; perhaps this could be addressed in an implementation step.

--It's important to the tribe that more accountability/pressure be put on Box Canyon Public Utility District.

--Dan mentioned that to the extent revision to the TMDL is tweaks and not a re-do of the TMDL, perhaps the State of Washington Dept. of Ecology would be willing to make changes in the TMDL(remains to be seen).

Ex. 5 - Deliberative

Next Steps: Region 10 will draft this 2-pager by ~Sept. 23 for sharing with Jim Keating, Jim Curtin (HQ

Informal Technical Review Team, too); we would like to come to agreement (state-tribe-and EPA) on this 2-pager as soon as possible and find a solution promptly.

Region 10 plans to set up a meeting with State of WA Dept. of Ecology staff and then plans to set up and EPA/Ecology/tribe meeting in the near future.

-----Original Message-----

From: Curtin, James

Sent: Wednesday, August 28, 2013 10:37 PM

To: Keating, Jim; Monschein, Eric; Goodin, John; Furtak, Sarah

Cc: wall.thomas@epa.gov; Croxton, Dave; Buffo, Corey; Schroer, Lee; Curtin, James

Subject: RE: Pend Oreille Kalispel Meeting report out

I agree with Jim K's report of the meeting. I think it was a very useful discussion and a positive step upon which to build.

Jim

Jim Curtin

USEPA Office of General Counsel

Water Law Office

202-564-5482

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-----Original Message-----

From: Keating, Jim

Sent: Wednesday, August 28, 2013 7:02 PM

To: Monschein, Eric; Goodin, John; Furtak, Sarah

Cc: Curtin, James; wall.thomas@epa.gov; Croxton, Dave; Buffo, Corey

Subject: Pend Oreille Kalispel Meeting report out

Attorney-Client Privilege

John, Eric, and Sarah,

The meeting went well. As it turned out, the meeting was just with the tribe: because of some issues with whether a tribal rep was functioning as an attorney or not the State was not comfortable attending in the end. Although this was unfortunate in some ways, it did allow for some constructive conversations to proceed with the tribe that may not have been possible in a three way meeting.

Bottom line is that the tribe is really seeking to facilitate what they view as important conservation measures (at Box Canyon and Albeni Falls dams) and they would like the TMDL to support their implementation and not thwart their efforts (as may be the case with Albeni Falls and the border issue we've discussed). I think we made some headway in opening up the possibility of either small changes in the TMDL and/or statements made in conjunction with EPA action on the TMDL that would meet the

tribe's needs without a complete redo.

Ex. 5 - Deliberative

The next steps include contacting the state and get a read on their willingness to move in this direction. This should be a far better position than the one they feared they would face from EPA. Some interaction with the Corps/Idaho and Box Canyon operators may also be needed at some point.

Overall the Region felt more positive about potential solution after the meeting. The tribe said the meeting was better than they expected. They expressed their appreciation to me several times for flying out to participate, so the HQ attention was noted (Jim C also participated by phone).

Obviously, more to come and I'm sure they'll be an opportunity for a more thorough report out. I was very impressed by the way Dan and Dave prepared for and conducted the meeting. I think they had just the right tone and direction. The R10 program staff and legal support was also highly effective.

Feel free to call me tomorrow (202-486-2872) if you have questions or want to hear more.